IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 4 OF 2001

Council of the Institute of
Chartered Accountants of India,
Indraprastha Marg, New Delhi .. Petitioner

v/s.

Shri Vijay R. Ashar, FCA,
M/s. Vijay R. Ashar & Co.,
Chartered Accountants,
3A, Metro Chambers,
69/71, S.S.Gaikwad Road,
Opp. Metro Cinema,
Mumbai-400 002. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S. Srikrishna i/by M/s. Kanga & Co. for petitioner.

None for respondent.

Mr.N.D.Salvi for Union of India.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 13th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The charge of professional misconduct that has stuck the respondent Shri Vijay R. Ashar is that inspite of the reason that his wife was director holding the substantial interest (holding more than 20% shares) in the Jamnadas Rutonsi Pvt.Ltd., the respondent accepted the appointment as auditor of the said company for the period from about 1984 to 4th December, 1990. The respondent was accordingly, held guilty of professional misconduct within the meaning of clause 4 of part I of second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act by the disciplinary committee. The

Council of the Institute of Chartered Accountants of India accepted the said finding of the disciplinary committee and has recommended to this court that the respondent be reprimanded.

2. This reference is, therefore, placed before was under section 21(5) of the Chartered Accountants Act, 1949.

3. Bereft of unnecessary details, suffice it to observe that Smt.Dipika V. Asher, wife of the respondent was examined before the committee. She admitted that she was the director of the company viz. Jamnadas Rutonsi Pvt.Ltd. and she held initially 90 shares in the year 1984 and thereafter 150 further shares. It appears that the wife of the respondent had holding of more than 20% shares in the said company.

4. The Code of Conduct for the chartered accountants framed by the Institute of Chartered Accountants of India provides that where the partner or relative of the member as a director in the company holds substantial interest, the member may desist from the undertaking audit of the financial statements and/or expression of opinion and if the member feels that his independence is not affected and undertakes the audit of such company, he should disclose such interest in his report while expressing his opinion on the financial statement of such company. The explanation of the respondent before the

disciplinary committee was that he was ignorant of the said guidelines. We are afraid, the explanation put forth by the respondent was hardly acceptable. It could not be believed that as a professional chartered accountant in practice, he was not aware of the guidelines and the Code of Conduct framed by the Institute of Chartered Accountants of India.

5. All in all, we find ourselves in agreement to the finding of the disciplinary committee accepted by the Council that the respondent had violated clause 4 of part I of the second schedule of the Chartered Accountants Act, 1949.

6. As regards the punishment, we find that the recommendation of the Council that the respondent be reprimanded is reasonable and rather lenient.

7. We, accordingly, order that the respondent be reprimanded. Reference is disposed of accordingly.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)